

1 Jason N. Haycock (SBN 278983)
Jason.Haycock@klgates.com
2 K. Taylor Yamahata (SBN 347192)
Taylor.Yamahata@klgates.com
3 K&L Gates LLP
Four Embarcadero Center, Suite 1200
4 San Francisco, CA 9411

5 Telephone: +1 415 882 8200
6 Facsimile: +1 415.882.8220

7 *Attorneys for Plaintiff*
NETGEAR, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11
12 NETGEAR, Inc.

13 Plaintiff,

14 v.

15 Choice Electronics Inc.

16 Defendant.
17
18
19
20
21
22
23
24
25
26
27
28

Civil Action No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1 Plaintiff NETGEAR, Inc. (“NETGEAR” or “Plaintiff”), by and through its
2 undersigned counsel, complains of Defendant Choice Electronics Inc. d/b/a Amazon
3 Seller Choice Electronics’ (Serial Numbers Recorded) (Amazon Seller ID
4 A18UQSTHS8A7FY) (“Defendant”) conduct and alleges upon information and
5 belief as follows:

6 **NATURE OF THIS ACTION**

7 1. NETGEAR seeks injunctive relief and monetary damages for
8 Defendant’s trademark infringement, false advertising, false designation of origin,
9 and unfair competition arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and
10 Business and Professions Code §§ 17200 *et seq.* from Defendant’s wrongful and
11 infringing promotion and sale of NETGEAR’s products, through online commerce
12 sites including but not limited to, Amazon.com. Defendant’s conduct has produced
13 and, unless enjoined by this Court will continue to produce a likelihood of consumer
14 confusion and deception, to the irreparable harm of NETGEAR.

15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the subject matter of this Complaint
17 pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims
18 arise under the Trademark Laws of the United States.

19 3. Defendant is subject to personal jurisdiction in this forum because
20 Defendant misrepresented the nature of products to residents of the State of
21 California and this District; because Defendant has sold products to residents of the
22 State of California and this District; because Defendant has caused injury to
23 NETGEAR’s trademarks in the State of California and this District; because
24 Defendant practices the unlawful conduct complained of herein, in part, within the
25 State of California and this District; because Defendant regularly conducts or solicits
26 business within the State of California and this District; because Defendant regularly
27 and systematically directs electronic activity into the State of California and this
28 District with the manifest intent of engaging in business within the State of California

1 and this District, including the sale and/or offer for sale of products to Internet users
 2 within the State of California and this District, as well as, upon information and
 3 belief, entry into contracts with residents of the State of California and this District
 4 through the sale of items through various online retail platforms.

5 4. Similarly, venue is proper in this judicial district under 28 U.S.C. §
 6 1391.

7 **PARTIES**

8 5. Plaintiff NETGEAR is a Delaware corporation with its principal place
 9 of business in San Jose, California. NETGEAR is a computer networking company
 10 that produces networking hardware for consumers, businesses, and service providers
 11 (the “NETGEAR Products”). NETGEAR turn ideas into innovative networking
 12 products that connect people, power businesses, and advance the way we live.

13 6. Defendant Choice Electronics Inc. d/b/a Amazon Seller Choice
 14 Electronics (Serial Numbers Recorded) (Amazon Seller ID A18UQSTHS8A7FY) is
 15 a New York corporation with its principal place of business located at 478 Albany
 16 Ave., Suite #5, Brooklyn, New York 11203. Defendant does business or has done
 17 business within the State of California and this District through various online
 18 commerce sites, including, but not limited to, Amazon.com. Defendant is an
 19 unauthorized reseller of NETGEAR Products.

20 **FACTS GIVING RISE TO THIS ACTION**

21 **A. NETGEAR’s Trademark Usage**

22 7. The U.S. Patent and Trademark Office (“USPTO”) has issued Reg. No.
 23 2,124,219 and 5,760,720 for use of the NETGEAR mark on, *inter alia*, “computer
 24 network interconnection hardware, namely, routers, bridges, hubs, and switches...”
 25 (hereinafter, the “NETGEAR Marks”).

26 8. The NETGEAR Marks have been in continuous use since at least 1996.
 27 Said registrations are in full force and effect, and the NETGEAR Marks are
 28 incontestable pursuant to 15 U.S.C. § 1065.

1 9. NETGEAR advertises, distributes, and sells its products to consumers
2 under the NETGEAR Marks.

3 10. NETGEAR has also acquired common law rights in the use of the
4 NETGEAR Marks throughout the United States.

5 11. NETGEAR's federal trademark registrations were duly and legally
6 issued, are valid and subsisting, and constitute *prima facie* evidence of NETGEAR's
7 exclusive ownership of the NETGEAR Marks.

8 12. NETGEAR has invested significant time, money, and effort in
9 advertising, promoting, and developing the NETGEAR Marks throughout the United
10 States and the world. As a result of such actions, NETGEAR has established
11 substantial goodwill and widespread recognition in its NETGEAR Marks, and the
12 Marks have become associated exclusively with NETGEAR and its products by both
13 customers and potential customers, as well as the general public at large.

14 13. To create and maintain such goodwill among its customers, NETGEAR
15 has taken substantial steps to ensure that products bearing the NETGEAR Marks are
16 of the highest quality. As a result, the NETGEAR Marks have become widely known
17 and are recognized throughout the United States and the world as a symbol of high-
18 quality products.

19 14. As a result of, *inter alia*, the care and skill exercised by NETGEAR in
20 the conduct of its business, the high quality of the goods sold under the NETGEAR
21 Marks, and the extensive advertising, sale, and promotion by NETGEAR of its
22 products, the NETGEAR Marks have acquired secondary meaning in the United
23 States and the world, including in this District.

24 15. NETGEAR is not now, nor has it ever been, affiliated with Defendant,
25 and has not now, nor has it ever, given Defendant authorization to use the NETGEAR
26 Marks.

B. Defendant's Infringing and Improper Conduct

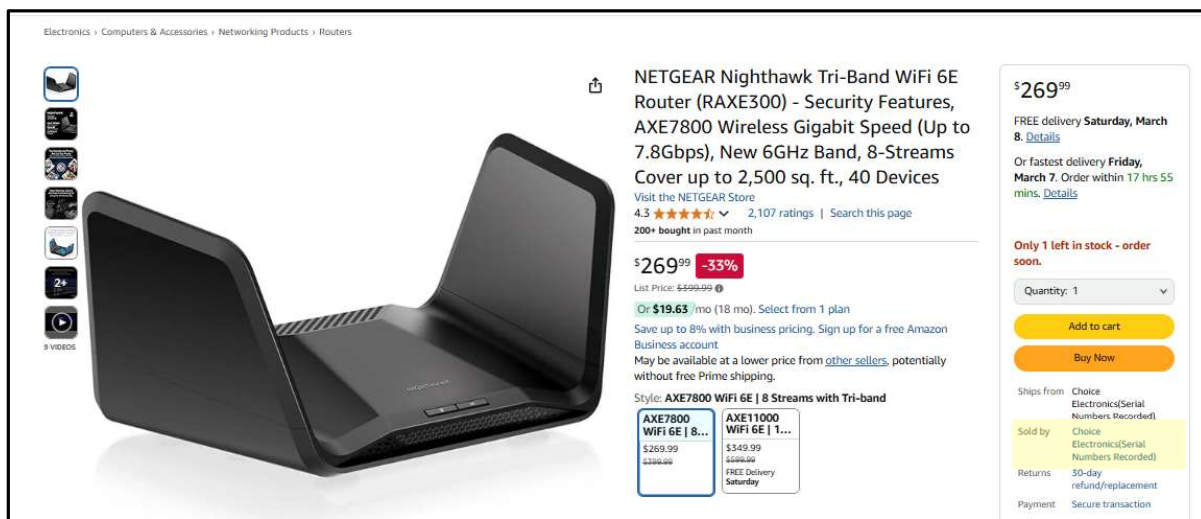
16. Defendant has sold and is currently selling products bearing the NETGEAR Marks on several online retail platforms, including, but not limited to, Amazon.com and Walmart.com.

17. NETGEAR has never authorized or otherwise granted Defendant permission to sell NETGEAR Products.

18. Defendant represents that the NETGEAR Products it offers for sale are “new” despite the fact that they are used, closed-out, liquidated, counterfeit, and/or non-genuine product of unknown origin.

19. Because Defendant purchases NETGEAR Product from return and liquidation stock, it is unaware of the condition or the prior chain of custody of the NETGEAR Product it sells. Therefore, all NETGEAR Products sold by Defendant are non-genuine products.

20. Below are examples of Defendant's product listings advertising products bearing the NETGEAR Marks to consumers in the United States on the



Internet:

Electronics › Computers & Accessories › Networking Products › Routers

NETGEAR Nighthawk 8-Stream WiFi 6 Router (RAX70) - Security Features, AX6600 Tri-band Wireless Speed (up to 6.6 Gbps) - Coverage up to 2,500 sq. ft., 40 Devices

Visit the NETGEAR Store
4.4 ★★★★★ | 2,633 ratings | Search this page
200+ bought in past month

\$234⁰⁰ **-38%**
List Price: \$379.99

Or **\$23.51**/mo (12 mo). Select from 1 plan
FREE Returns

Thank you for being a Prime member. Get \$100 off: Pay **\$134.00** ~~\$234.00~~ upon approval for Prime Visa.

May be available at a lower price from [other sellers](#), potentially without free Prime shipping.

Style: **WiFi 6, 6.6Gbps**

Product details

Top highlights

Brand: NETGEAR
Model Name: RAX70
Special Feature: Alexa Compatible, Parental Control, Access Point Mode, Beamforming, Guest Mode, Internet Security, QoS,

\$234⁰⁰
FREE Returns
FREE delivery **Tuesday, March 11** for Prime members. Order within 6 hrs 50 mins

Only 2 left in stock - order soon.

Quantity: 1

Add to cart
Buy Now

Ships from: Amazon
Sold by: Choice Electronics (Serial Numbers Recorded)
Returns: 30-day refund/replacement
Gift options: Available at checkout
See more

Seller Certifications:
Minority-Owned Business

Add a Protection Plan:
☐ Asurion Complete Protect: One plan covers all eligible past and future purchases (Renews Monthly Until Cancelled) for

Electronics › Computers & Accessories › Networking Products › Whole Home & Mesh Wi-Fi Systems

NETGEAR Orbi Tri-Band WiFi 6 Mesh Network System (RBK7625) – Router + 1 Satellite Extender, Security Features, Up to 5.4 Gbps, Covers up to 5,000 sq. ft., 75 Devices, Free Armor Security

Visit the NETGEAR Store
4.1 ★★★★★ | 1,017 ratings | Search this page
Amazon's Choice
200+ bought in past month

\$300⁰⁰
Or **\$21.82**/mo (18 mo). Select from 1 plan
prime Two-Day
FREE Returns
Save up to 20% with business pricing. Sign up for a free Amazon Business account.
Available with free Prime shipping from [other sellers on Amazon](#).

Style: **AX5400, Armor**

AX5400, Armor
\$300.00
FREE Delivery Friday

AX5400
See available options

\$300⁰⁰
prime Two-Day
FREE Returns
FREE delivery **Friday, March 7**. Order within 6 hrs 47 mins
Shorter shipping distance

In Stock

Quantity: 1

Add to cart
Buy Now

Ships from: Amazon
Sold by: Choice Electronics (Serial Numbers Recorded)
Returns: 30-day refund/replacement
Gift options: Available at checkout
See more

Electronics › Computers & Accessories › Networking Products › Modems

NETGEAR Nighthawk Multi-Gig Cable Modem for Xfinity Voice (CM2050V) – for Cable Plans up to 2.5Gbps - DOCSIS 3.1-2 Phone Lines

Visit the NETGEAR Store
4.2 ★★★★★ | 3,715 ratings | Search this page
200+ bought in past month

\$324⁹⁹ **-7%**
List Price: \$349.99

Or **\$23.63**/mo (18 mo). Select from 1 plan
prime
FREE Returns
Save up to 7% with business pricing. Sign up for a free Amazon Business account
May be available at a lower price from [other sellers](#), potentially without free Prime shipping.

Style: **Modem for Xfinity Voice**

Product details

Top highlights

Brand: NETGEAR
Internet service provider: Xfinity

\$324⁹⁹
prime
FREE Returns
FREE delivery **Sunday, March 9**. Order within 11 hrs 6 mins

Only 19 left in stock - order soon.

Quantity: 1

Add to cart
Buy Now

Ships from: Amazon
Sold by: Choice Electronics (Serial Numbers Recorded)
Returns: 30-day refund/replacement
Packaging: Ships in product packaging
See more

Seller Certifications:
Minority-Owned Business



21. Defendant's advertisement of NETGEAR Products and use of the NETGEAR Marks provides customers with a false assurance that the products they purchase from Defendant conform with NETGEAR's high standards and work as intended, when in fact they are receiving non-genuine, used, and/or liquidation NETGEAR Products.

22. Defendant falsely advertises the NETGEAR Products it offers for sale and sells on the Internet to United States consumers using the NETGEAR Marks.

23. Specifically, Defendant advertises "new" NETGEAR Products but fulfills orders with liquidated, used, or non-genuine product of unknown origin.

24. By advertising "new" NETGEAR Products to consumers in the United States, Defendant falsely represents and/or creates the false impression that the products are endorsed by or affiliated with "new" products sold by NETGEAR. However, the products bearing the NETGEAR Marks which are liquidated, used, or non-genuine product of unknown origin actually sold and delivered to consumers by Defendant are not the same that would be received by a customer from NETGEAR.

25. Furthermore, Defendant falsely advertises NETGEAR Products on Amazon.com. Defendant represents that the NETGEAR Products they offer for sale

1 on Amazon.com are “new,” yet Defendant’s NETGEAR Products on Amazon.com
2 are not in “new” condition as advertised.

3 26. Amazon’s announced Terms and Conditions¹ require that in order to
4 advertise a product as “new,” it must carry the manufacturer’s warranty:

General condition guidelines

The following guidelines apply to all product categories unless otherwise indicated in the Category-Specific Condition Guidelines listed below:

New:

Just like it sounds. A brand-new item. Original manufacturer’s warranty, if any, still applies, with warranty details included in the listing comments. Original packaging is present for most New items but certain items like shoes may be re-boxed.

10 27. However, Defendant does not offer a warranty of the products it sells.
11 Indeed, a simple review of its feedback makes clear that it does not warrant the
12 products it sells.

13 28. Because Defendant’s NETGEAR Products are not warranted, the
14 products bearing the NETGEAR Marks actually sold and delivered to purchasing
15 customers by Defendant via Amazon.com are not in “new” condition in the ordinary
16 English sense of the word or pursuant to Amazon’s Terms and Conditions.

17 29. Defendant’s advertisement of “new” NETGEAR Products when they
18 are in fact not new and not covered by a warranty has caused consumer confusion
19 and harm.

20 30. In addition to harm to consumers, the sale of non-genuine NETGEAR
21 Products directly harms NETGEAR. When consumers purchase NETGEAR
22 Products from Defendant, they expect that the products they receive are new and in
23 proper working order. Instead, their image of NETGEAR is diminished because they
24 receive liquidated, used, or non-genuine product of unknown origin. NETGEAR’s
25 opportunity to sell genuine, high-quality products to those consumers may be lost
26 forever.

27
28
¹ Available at: <https://sellercentral.amazon.com/help/hub/reference/external/200339950>.

1 31. As a result of Defendant's conduct, NETGEAR suffers substantial and
2 irreparable harm to its brand, image, business, and goodwill with the public.

3 32. Defendant is on actual notice that its customers are upset with its
4 practice of selling liquidated, used, or non-genuine product of unknown origin as
5 "new" condition product.

6 33. Many of Defendant's customers have left feedback and/or complaints
7 with Defendant complaining about the condition of the products it sells.

8 34. By means of example, on December 16, 2024, a customer of Defendant
9 left the following 1-star (out of 5-star) review:

10 "DO NOT BUY FROM THIS SELLER!!!!!! Seller sent
11 damaged item. Trying to say I did the damage."

12 35. Similarly, on December 14, 2024, a customer of Defendant left the
13 following 1-star review on Defendant's page:

14 "Sent me a defective unit and then have me 8 dollars for a
15 refund on a 150\$ item. Don't buy here."

16 36. On November 5, 2024, another customer of Defendant left the following
17 1-star review on Defendant's page:

18 "Item received didn't work and they still made me pay for
19 return shipping (\$100) and still didn't give full refund.
20 Don't buy from these people."

21 37. On December 19, 2023, another customer of Defendant left the
22 following 2-star review on Defendant's page:

23 "Received used item with expired warranty"

24 38. On December 18, 2024, a customer of Defendant left the following 2-
25 star review on Defendant's page:

26 "There are 2 other labels under my address ship label on
27 the box. Appears this product was returned at least twice
28 and then sold again as new to me as a new product. Very

very shady. They didn't even bother removing all the old labels or getting a new box. Tons of shipping tape on it.”

39. Offering NETGEAR Products as “new” despite the fact that they are used, closed-out, liquidated, counterfeit, and/or non-genuine product of unknown origin results in poor NETGEAR brand experiences such as the above.

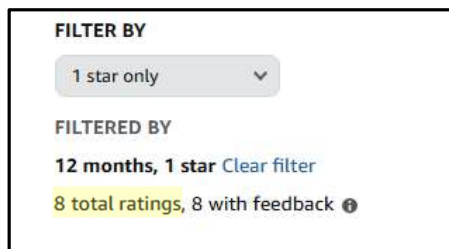
40. Defendant’s conduct results in consumer confusion, the dilution of NETGEAR’s goodwill and trade name, as well as lost sales and profits of actual “new” NETGEAR Products.

41. Moreover, Defendant is also improperly manipulating the online review system and falsely advertising its positive online review score in order to deceive customers and improperly compete with NETGEAR for sales.

42. Defendant’s storefront lists the following, claiming that 91% of the reviews in the last 12 months have been positive, implying that only 9% of the reviews have been negative.



43. Defendant goes so far as to claim it has had only eight (8) reviews below 3-stars.



44. Customers rely upon and use the above positive rating when deciding which merchant to make a purchase from.

45. However, Defendant’s true rating is far lower than it appears, as Defendant is purposefully hiding poor reviews by falsely reporting these reviews as

1 being the fault of the fulfillment service. In short, Defendant is purposefully
2 suppressing honest negative reviews it has received from customers.

3 46. After receiving a poor customer review, Defendant falsely reports the
4 poor customer review as being the fault of the fulfillment service with full knowledge
5 that the fulfillment service had no part in the product which created the poor customer
6 experience.

7 47. When reported in this manner, the review does not count towards the
8 seller's feedback score.

9 48. Despite holding itself out to consumers as having 91% positive feedback
10 over the last 12 months, approximately 32 of Defendant's customers have left a 1-
11 star review, 3 have left a 2-star review, and 5 left a 3-star review. Therefore,
12 Defendant has actually received 40 negative reviews in the last 12 months, which is
13 over 30% — not 9% — of all reviews it has received in this period.

14 49. Customers rely upon and use the above positive rating when deciding
15 from which merchant to make a purchase. Customers are less likely to buy products
16 from sellers with poor consumer feedback scores.

17 50. Customer reviews are important to a buyer because they provide honest
18 insights from other shoppers, helping a buyer make informed purchasing decisions.

19 51. Customer reviews help buyers determine if a product matches its
20 description and performs as expected.

21 52. Negative customer reviews highlight potential flaws, defects, or
22 misleading claims, helping buyers avoid bad purchases.

23 53. Customer reviews provide feedback on the seller's reliability and help
24 buyers decide whether to trust a particular seller – who is otherwise an unknown
25 internet storefront.

26 54. Customer reviews are also used by buyers to expose misleading listings,
27 protecting buyers from fraud, helping buyers avoid disappointing purchases and
28 ensuring that they get the best value for their money.

1 55. In short, customer reviews serve as a powerful research tool that allows
2 buyers to shop with confidence and make better purchasing decisions.

3 56. Not only are customer reviews important to a buyer, but they are also
4 crucial for an Amazon seller as reviews directly impact sales, credibility, and product
5 visibility.

6 57. For example, positive customer feedback results in improved product
7 rankings for a seller. Amazon's algorithm favors sellers with better ratings and
8 engagement, pushing them higher in search results.

9 58. Similarly, a lack of negative reviews influences Buy Box eligibility for
10 a seller. Positive seller reviews and performance metrics can increase the chances of
11 winning the Buy Box, leading to more sales while negative reviews have the opposite
12 impact.

13 59. Also, when a consumer lands on an Amazon page, a seller's feedback
14 determines whether Amazon recommends that seller to the customer. The lower the
15 feedback score, the less recommendations and visibility to consumers is received by
16 the seller.

17 60. Defendant's true rating is far lower than it appears, as Defendant is
18 purposefully suppressing honest negative reviews by falsely reporting these reviews
19 as being the fault of the fulfillment service.

20 61. By falsely reporting the poor feedback as a *fulfillment* issue with full
21 knowledge that it is instead a *product* issue, Defendant purposefully manipulates the
22 feedback to artificially inflate its feedback and positivity score all to its benefit but to
23 the detriment of unsuspecting customers and legitimate resellers who do not engage
24 in this practice.

25 62. In fact, just last year, the FTC made clear that the suppression of honest
26 online reviews is an unfair and deceptive trade practice. Specifically, 16 C.F.R. §
27 465.7 makes clear that "review suppression" is "an unfair or deceptive act or
28 practice."

1 63. But for Defendant’s manipulation and purposeful suppression of honest
2 negative reviews, it would have a far lower feedback and positivity score, resulting
3 in far less sales to Defendant and more sales to Plaintiff, which uses Amazon as a
4 retailer and directly competes with Defendant for sales of NETGEAR Products
5 through the Amazon.com platform.

6 64. By falsely reporting the poor feedback as a fulfillment issue with full
7 knowledge that it is instead a product issue, Defendant purposefully manipulates the
8 feedback to artificially inflate its feedback and positivity score all to its benefit but to
9 the detriment of unsuspecting customers and NETGEAR who does not engage in this
10 practice.

11 **C. Likelihood of Confusion and Injury Caused by Defendant’s Actions**

12 65. Defendant’s actions substantially harm NETGEAR by placing
13 infringing, falsely advertised NETGEAR Products into the stream of commerce in
14 the United States through a storefront with an artificially high feedback rating.

15 66. Defendant’s advertisement and sale of non-genuine products bearing the
16 NETGEAR Marks has caused – and is likely to continue causing – consumer
17 confusion by representing to consumers that the NETGEAR Products offered by sale
18 by Defendant are “new” when they are not.

19 67. Defendant’s advertisement and sale of non-genuine products bearing the
20 NETGEAR Marks has caused – and is likely to continue causing – consumer
21 confusion and disappointment regarding NETGEAR’s sponsorship or approval of
22 those products, creating a false designation of origin in the minds of consumers.

23 68. Defendant’s actions substantially harm NETGEAR’s goodwill and
24 reputation when consumers learn that the products bearing the NETGEAR Marks
25 they have purchased from Defendant are not as advertised and from a far less
26 reputable reseller than it appeared.

27
28

69. Defendant's conduct results in consumer confusion as well as the dilution of NETGEAR's goodwill and trade name as consumers are not receiving the products they believe they are purchasing.

70. Defendant's conduct as described herein results in the lessening of sales of genuine, properly advertised NETGEAR Products to the detriment of NETGEAR.

71. As a result of Defendant's actions, NETGEAR is suffering a loss of the enormous goodwill it created in the NETGEAR Marks.

72. Defendant continues to commit the acts complained of herein, and unless restrained and enjoined, will continue to do so, all to NETGEAR's irreparable harm.

COUNT I

Trademark Infringement in Violation of 15 U.S.C. § 1114

(as to resale of products)

73. NETGEAR hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

74. This is a claim for federal trademark infringement under 15 U.S.C. § 1114.

75. The acts of Defendant alleged herein constitute the use in commerce, without the consent of NETGEAR, of a reproduction, counterfeit, copy, or colorable imitation of the NETGEAR Mark in connection with the sale, offering for sale, distribution, or advertising of goods, which use is likely to cause confusion or mistake, or to deceive consumers, and therefore infringe NETGEAR's rights in the NETGEAR Marks, all in violation of the Lanham Act.

76. Defendant's infringing activities are likely to cause, are actually causing, and are willful and intended to cause, confusion, mistake, and deception among members of the trade and the general consuming public as to the origin and quality of such products and constitute trademark infringement under 15 U.S.C. § 1114.

1 85. By advertising or promoting products using the NETGEAR Marks that
2 are different from those sold by NETGEAR as alleged herein, Defendant is
3 misrepresenting the nature, characteristics, and qualities of its goods and services in
4 violation of 15 U.S.C. § 1125(a).

5 86. Defendant's continued use of the NETGEAR Marks constitutes the use
6 in interstate commerce of a word, term, name, symbol, or device, or any combination
7 thereof, or false designation of origin, in connection with the sale, or offering for sale,
8 of goods in violation of 15 U.S.C. § 1125(a)(1)(A).

9 87. Defendant has used, and continues to use, the NETGEAR Marks to sell
10 products that are different from those sold by NETGEAR in the United States,
11 thereby creating a false designation of origin in violation of 15 U.S.C. § 1125(a), and
12 Defendant's activities have caused and, unless enjoined by this Court, will continue
13 to cause a likelihood of confusion and public deception in the marketplace, and injury
14 to NETGEAR's goodwill and reputation as symbolized by the NETGEAR Marks,
15 for which NETGEAR has no adequate remedy at law.

16 88. Defendant's actions demonstrate an intentional, willful, and malicious
17 intent to trade on the goodwill associated with the NETGEAR Marks, thereby
18 causing immediate, substantial, and irreparable injury to NETGEAR.

19 89. By selling and advertising products under the NETGEAR Marks that
20 are different from those sold by NETGEAR, Defendant is using the NETGEAR
21 Marks in connection with the sale, offering for sale, distribution, and/or advertising
22 of goods and services to the public, without NETGEAR's consent. Defendant is
23 falsely designating the origin of its goods and services and/or falsely representing
24 sponsorship by, affiliation with, or connection to, NETGEAR and its goods and
25 services in violation of 15 U.S.C. 1125(a). Accordingly, NETGEAR is entitled to a
26 judgment of three times its damages and Defendant's ill-gotten profits, together with
27 reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).
28

90. As a direct and proximate result of Defendant's actions, NETGEAR has been, and continues to be, damaged by Defendant's activities and conduct. Defendant has profited thereby, and unless their conduct is enjoined, NETGEAR's reputation and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages. Accordingly, NETGEAR is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

COUNT III

False Advertising in Violation of 15 U.S.C. S 1125(a)

(as to resale of products)

91. NETGEAR hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

92. Defendant has made and distributed, in interstate commerce and in this District, product listings and advertisements that contain false or misleading statements of fact regarding its products. These advertisements contain actual misstatements and/or misleading statements, including the authenticity, origin, and condition of these products and/or the positivity or feedback rating of its storefront. These false statements actually deceive, or have a tendency to deceive, a substantial segment of NETGEAR's customers and potential customers. This deception is material in that it is likely to influence the purchasing decisions of NETGEAR's customers.

93. Defendant's false and misleading advertisements violate Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

94. Defendant, as described more fully above, has caused, and will continue to cause, immediate and irreparable injury to NETGEAR for which there is no adequate remedy at law. As such, NETGEAR is entitled to an injunction under 15 U.S.C. § 1116 restraining Defendant, its distributors, retailers, agents, employees, representatives, and all persons acting in concert with it, from engaging in further

1 acts of false advertising, and ordering removal of all Defendant's false
2 advertisements.

3 95. Defendant's actions demonstrate an intentional, willful, and malicious
4 intent to trade on the goodwill associated with the NETGEAR Marks, thereby
5 causing immediate, substantial, and irreparable injury to NETGEAR.

6 96. Pursuant to 15 U.S.C. § 1117, NETGEAR is entitled to recover from
7 Defendant the damages sustained by NETGEAR as a result of Defendant's acts in
8 violation of Section 43 of the Lanham Act.

9 97. Pursuant to 15 U.S.C. § 1117, NETGEAR is also entitled to recover
10 from Defendant the gains, profits, and advantages that they have obtained as a result
11 of its unlawful acts. NETGEAR is presently unable to ascertain the full amount of
12 the gains, profits, and advantages Defendant has obtained by reason of its unlawful
13 acts.

14 98. Pursuant to 15 U.S.C. § 1117, NETGEAR is further entitled to recover
15 the costs of this action. Moreover, NETGEAR is informed and believes that
16 Defendant's conduct was undertaken willfully and with the intention of causing
17 confusion, mistake, or deception, making this an exceptional case entitling
18 NETGEAR to recover additional damages and reasonable attorneys' fees.

19 **COUNT IV**

20 **Violation of Business and Professions Code §§ 17200 *et seq.***

21 **(as to resale of products and review manipulation)**

22 99. NETGEAR hereby realleges each and every allegation contained in the
23 foregoing paragraphs as if fully set forth herein.

24 100. The California Unfair Competition Law, codified at Business &
25 Professions Code §§ 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent
26 business act or practice.

101. Defendant's acts, omissions, misrepresentations, and/or practices constitute unlawful, unfair, and/or fraudulent business acts and practices within the meaning of California Business & Professions Code §§ 17200, *et seq.*

102. Defendant's misconduct has a tendency and likelihood to deceive members of the public.

103. The foregoing acts and practices have caused substantial harm to NETGEAR.

104. As a direct and proximate cause of the unlawful, unfair, and fraudulent acts and practices of Defendant, NETGEAR has lost money and suffered injury in fact and damage in the form of lost sales revenue, fees, and other costs.

105. Defendant's conduct constitutes fraud, suppression and/or concealment, and misrepresentation of material facts known to it, with the intent of inducing reliance and thereby depriving NETGEAR of property and/or legal rights or otherwise causing injury. Defendant's conduct subjected NETGEAR to unjust hardship in conscious disregard of the Plaintiff's rights, such as to constitute malice, oppression, or fraud under California Civil Code § 3294, thereby entitling NETGEAR to an award of exemplary and punitive damages in an amount appropriate to punish or set an example of Defendant.

COUNT V

(Violations of N.Y. General Business Law § 349)

(as to review manipulation)

106. NETGEAR hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

107. N.Y. General Business Law § 349 prohibits any deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.

108. Defendant's acts, omissions, misrepresentations, and/or practices concerning the purposeful suppression of honest customer reviews constitute deceptive acts or practices within the meaning of N.Y. General Business Law § 349.

109. Defendant's misconduct has a tendency and likelihood to deceive members of the public.

110. The foregoing acts and practices have caused substantial harm to NETGEAR due to a lessening of its goodwill and through sales lost to Defendant.

111. As a direct and proximate cause of the unlawful, unfair, and fraudulent acts and practices of Defendant, NETGEAR has lost money and suffered injury in fact and damage in the form of lost sales revenue, fees, and other costs.

112. Defendant's conduct constitutes fraud, suppression and/or concealment, and misrepresentation of material facts known to it, with the intent of inducing reliance and thereby depriving NETGEAR of property and/or legal rights or otherwise causing injury

WHEREFORE, NETGEAR prays for judgment against Defendant as follows:

A. Finding that, (i) as to Count I, Defendant's unauthorized sale of NETGEAR Products infringes on NETGEAR's registered trademark, in violation of 15 U.S.C. § 1114; (ii) as to Count II, Defendant's unauthorized sale of NETGEAR Products constitutes a false designation of origin, in violation of 15 U.S.C. § 1125(a); (iii) as to Count III, Defendant's false advertisement of NETGEAR Products constitutes false advertising, in violation of 15 U.S.C. § 1125(a); and (iv) as to Count IV and V, Defendant's actions constitute a violation of California and New York law, resulting in Defendant, its officers, agents, servants, employees, attorneys, and any other persons or entities acting in concert or participation with Defendant, including but not limited to any online platform such as Amazon.com or any other website,

1 website host, website administrator, domain registrar, or internet service
2 provider, being preliminarily and permanently enjoined from:

- 3 i. Using or attempting to use, any of NETGEAR's intellectual
4 property, including, but not limited to, the NETGEAR Marks;
5 ii. Advertising, selling, or taking any steps to sell, any products bearing
6 the NETGEAR Marks in an improper manner;
7 iii. Engaging in any activity constituting unfair competition with
8 NETGEAR; and
9 iv. Inducing, assisting, or abetting any other person or entity in engaging
10 in or performing any of the business activities described in the
11 paragraphs above.

12 B. Award NETGEAR its damages suffered as a result of Defendant's acts and
13 treble said damages as provided by law pursuant to 15 U.S.C. § 1117 and/or
14 California Business and Professions Code § 17200 et seq, and/or N.Y.
15 General Business Law § 349;

16 C. Award NETGEAR Defendant's profits as a result of Defendant's acts and
17 treble said damages as provided by law pursuant to 15 U.S.C. § 1117 and/or
18 California Business and Professions Code § 17200 et seq. and/or N.Y.
19 General Business Law § 349;

20 D. Award NETGEAR statutory damages of \$2,000,000.00 per mark pursuant to
21 15 U.S.C. § 1117(c);

22 E. Award NETGEAR exemplary and punitive damages in an appropriate
23 amount;

24 F. Enter judgment that Defendant's acts of infringement have been knowing
25 and willful;

26 G. Award NETGEAR its reasonable attorneys' fees in bringing this action as
27 allowed by law;
28

1 H. Award NETGEAR pre-judgment and post-judgment interest in the
2 maximum amount allowed under the law;

3 I. Award NETGEAR the costs incurred in bringing this action; and

4 J. Award NETGEAR such other relief as this Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 NETGEAR hereby requests trial by jury on all claims so triable.

7
8 Dated: March 17, 2025

K&L GATES LLP

9
10 By: /s/ K. Taylor Yamahata

11 Jason N. Haycock

12 K. Taylor Yamahata

13 *Attorneys for Plaintiff*
14 NETGEAR, Inc.